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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MARIA R. METCALF, et al.,

12 Plaintiffs,

13 vs.

14 DREXEL LENDING GROUP, et al.,

15 Defendants.

CASE NO. 08-CV-00731 W POR

**ORDER GRANTING
DEFENDANTS' MOTIONS TO
DISMISS (DOC NOS. 42, 43)**

16 Pending before the Court are Defendants Aurora Loan Services, LLC ("Aurora"),
17 and DGG Financial Corporation dba Drexel Lending Group's ("Drexel") motions to
18 dismiss Plaintiffs' First Amended Complaint ("FAC") or, in the alternative, for a more
19 definite statement. The Court decides the matter on the papers submitted and without
20 oral argument. See S.D. Cal. Civ. R. 7.1(d.1). For the reasons stated herein, the Court
21 **GRANTS** Defendants' motions to dismiss.

22
23 **I. BACKGROUND**

24 On or about February 2, 2007, Plaintiff Maria R. Metcalf entered into a \$900,000
25 loan agreement secured by a deed of trust in favor of Drexel relating to real property
26 located in Bonita, California (the "Property"). (FAC, ¶¶ 10, 13¹; Aurora Mot., p.1.)
27

28 ¹The FAC alleges that the property is located in Bonita, but Plaintiffs' opposition alleges
that the property is located in Chula Vista. (Opp'n, p.1.)

1 Plaintiff Dennis R. Gray is not a party to the note, but resides in the Property. (*Opp'n.*,
2 pp.1–2.)

3 On or about February 26, 2007, Defendant Robert E. Weiss, Inc., caused a Notice
4 of Default to be recorded, and on December 28, 2007, Weiss caused a Notice of
5 Trustee's Sale for the Property to be recorded. (*Id.*, Exs. B, C.) On February 22, 2008,
6 Aurora purchased the Property at a foreclosure sale, and a Trustee's Deed Upon Sale
7 was recorded in the Official Records of San Diego County. (*Id.*, Ex. D.)

8 On April 22, 2008, Metcalf filed this lawsuit. On July 28, 2008, Metlcal filed the
9 FAC, adding Gray as a plaintiff. Plaintiffs accuse Defendants of violating various federal
10 statutes and California state laws. Plaintiffs seek compensatory damages and rescission
11 of the mortgage and note.

12 On August 8, and August 11, 2008, Defendants Drexel and Aurora filed motions
13 to dismiss or, in the alternative, for a more definite statement. For the reasons stated
14 below, the Court will grant Defendants' motions to dismiss.

16 **II. LEGAL STANDARD**

17 A motion to dismiss under Rule 12(b)(6) tests the complaint's sufficiency. See
18 North Star Int'l. v. Arizona Corp. Comm'n., 720 F.2d 578, 581 (9th Cir. 1983). The
19 Court must dismiss a cause of action that fails to state a claim upon which relief can be
20 granted. Fed. R. Civ. P. 12(b)(6). A complaint may be dismissed as a matter of law for
21 two reasons: (1) lack of a cognizable legal theory, or (2) insufficient facts under a
22 cognizable theory. Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th
23 Cir. 1984).

24 As the Supreme Court recently explained, "[w]hile a complaint attacked by a
25 Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's
26 obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels
27 and conclusions, and a formulaic recitation of the elements of a cause of action will not
28 do." Bell Atlantic Corp. v. Twombly, — — — U.S. — — —, — — —, 127 S.Ct. 1955, 1964

1 (2007). Rather, the allegations in the complaint “must be enough to raise a right to
2 relief above the speculative level.” Id. at 1964–65.

3 Additionally, all material allegations in the complaint, “even if doubtful in fact,”
4 are assumed to be true. Id. The court must assume the truth of all factual allegations
5 and must “construe them in the light most favorable to the nonmoving party.”
6 Gompper v. VISX, Inc., 298 F.3d 893, 895 (9th Cir. 2002). The complaint and all
7 reasonable inferences therefrom are construed in the plaintiff’s favor. Walleri v. Fed.
8 Home Loan Bank of Seattle, 83 F.3d 1575, 1580 (9th Cir. 1996). Nevertheless,
9 conclusory legal allegations and unwarranted inferences are insufficient to defeat a
10 motion to dismiss. Ove v. Gwinn, 264 F.3d 817, 821 (9th Cir. 2001).

11 12 **III. DISCUSSION**

13 **A. Plaintiff Gray Lacks Standing.**

14 Defendants contend that Gray lacks standing because Plaintiffs’ claims arise out
15 of the loan, to which Gray was not a party. Defendants also contend that Gray was not
16 a party to the deed of trust, and did not hold title to the Property during the relevant
17 time because he transferred title to Metcalf by quitclaim deed in January 1999, 8 years
18 before the loan transaction.

19 In every federal case, the party bringing suit must establish standing. Elk Grove
20 Unified School District v. Newdow, 542 U.S. 1, 11 (2004). The constitution requires
21 the plaintiff to show that the defendant’s conduct caused him to suffer an injury in fact
22 that may be redressed by a favorable judgment. Id. Also, the prudential rule of standing
23 bars a litigant from asserting the rights of others. In re Crevier, 820 F.2d 1553, 1555
24 (9th Cir. 1987).

25 As applied here, in order to satisfy the standing requirement, Gray must establish
26 that his injury may be addressed by a favorable judgment. However, Plaintiffs’ claims
27 arise out of the loan transaction. Because Gray was not a party to the loan, any ruling
28 regarding the validity or enforcement of the loan would not directly effect him. Viewed

1 another way, Defendants' conduct could not have caused Gray any harm because
2 Defendants' obligations in connection with the loan were owed to Metcalf.

3 Furthermore, Gray is not a "consumer" as defined by TILA. Generally, the statute
4 defines a "consumer" as "a cardholder or a natural person to whom consumer credit is
5 offered or extended." See 12 C.F.R. § 226.2(a)(11). Because Gray was not a party to
6 the loan, he is not a person to whom consumer credit was offered or extended. (See
7 *Aurora RJN*, Ex. A.)

8 Plaintiffs nevertheless contend that Gray has a 50% ownership right by virtue of
9 his previous payments and investments in the Property. But despite his contributions
10 to the Property, Gray concedes that "the property was transferred [to] Maria [Metcalf]'s
11 name as stated in the transfer deed. . . ." (*Opp'n.*, pp.1–2.) Although Gray argues that
12 the transfer did not sever or limit his ownership rights in the Property, Plaintiffs' fail to
13 cite any authority that would support his claims against these defendants. For these
14 reasons, the Court finds that Gray lacks standing.

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16 **B. Injunctive Relief Cause of Action.**

17 Metcalf's first cause of action requests that the Court enjoin the foreclosure sale
18 and her eviction. Defendants argue that this "cause of action" is a remedy and not a
19 claim. Additionally, Defendants contend that since the foreclosure has already taken
20 place, the claim is moot. Finally, Defendants argue that the request to enjoin Metcalf's
21 eviction is improper because the matter is pending in another federal case. The Court
22 agrees.

23 A cause of action is moot when the plaintiffs are no longer in a position to be
24 harmed by the complained-of behavior. See RK Ventures, Inc. v. City of Seattle, 307
25 F.3d 1045, 1056 (9th Cir. 2002) (holding that appellants could not obtain relief when
26 they were no longer operating the club which had been subject to the complained-of
27 nuisance abatement ordinance). In a lawsuit for injunctive relief, defendants must
28 establish that (1) their alleged behavior cannot be reasonably expected to recur or

1 (2) interim events have eradicated the effects of the alleged violation. Demery v.
2 Arpaio, 378 F.3d 1020, 1026 (9th Cir. 2004) (citing Norman-Bloodsaw v. Lawrence
3 Berkeley Laboratory, 135 F.3d 1260, 1274 (9th Cir. 1998)). Here, the foreclosure sale
4 occurred on February 22, 2008. Because the Court cannot enjoin the sale, Metcal's
5 request is moot.

6 With respect to Metcalf's eviction, it is the subject of an unlawful-detainer action
7 that Metcalf removed from state court, and which is currently pending before District
8 Judge William Q. Hayes. And as this Court previously stated in its July 3, 2008 order,
9 this Court does not have the authority to enjoin another pending federal case. (*See Doc.*
10 *No. 31*, pp.2–3.) Accordingly, Metcalf's request that this Court enjoin her eviction is
11 improper.

12 For the reasons stated above, the cause of action for injunctive relief is dismissed.
13 Metcalf may amend the FAC to include injunctive relief as a remedy for specific causes
14 of action. However, Metcalf's request for injunctive relief relating to the foreclosure sale
15 and eviction are stricken from the complaint.

16
17 **C. Statutory Damages Cause of Action.**

18 Metcalf's second cause of action requests statutory damages for Defendants'
19 alleged violation of three federal laws and seven state laws. Specifically, Metcalf alleges
20 claims based on: (1) the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, *et seq.*;
21 (2) the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601, *et seq.*;
22 (3) 12 U.S.C. § 1831n ("Accounting objectives, standards, and requirements");
23 (4) California Business and Professions Code § 17200; (5) unjust enrichment; (6) breach
24 of fiduciary duty; (7) conversion; (8) negligence; (9) California Consumer Protection
25 Act; and (10) California Civil Code § 2943. The Court will address the federal and
26 state claims separately.

1 **1. Federal claims.**

2 Metcalf alleges claims under three federal statutes: RESPA, TILA, and 12 U.S.C.
3 § 1831n. For the following reasons, each of these claims must be dismissed.

4 Metcalf's RESPA claim is barred by the applicable one-year statute of limitations.
5 See 12 U.S.C. § 2641. The RESPA statute of limitations generally begins to run no later
6 than the date of actual disclosure of actions constituting an alleged violation. Meyer v.
7 Ameriquist Mtg. Co., 342 F.3d 899, 902 (9th Cir. 2003). Typically, in cases involving
8 loan documents, the statute begins to run when the documents are signed unless
9 evidence is presented to override this assumption. Id. Because Metcalf signed the loan
10 documents on February 2, 2007, but did not file this lawsuit until April 2008, the
11 RESPA claim is time barred. (FAC, ¶49; *Aurora Mot.*, p.5.)

12 Similarly, Metcalf's TILA claim is also time barred. 15 U.S.C. § 1640 provides
13 that all actions for TILA violations are subject to a one-year statute of limitations, which
14 begins to run on the loan's closing date. Because the loan closed no later than February
15 2007, the TILA claim is time barred.

16 Finally, with respect to Defendants alleged violation of 12 U.S.C. § 1831n(2)(A),
17 the FAC alleges simply that the statute requires banks to follow "Uniform accounting
18 principles consistent with GAA." (FAC, ¶ 28(2).) There are no factual allegations
19 identifying how Defendants allegedly violated the statute. Metcalf, therefore, has not
20 satisfied the pleading requirements for this claim.

21 For the foregoing reasons, Metcalf's TILA and RESPA claims are dismissed
22 without leave to amend. The 12 U.S.C. § 1831n claim is dismissed with leave to amend.

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25 **2. State claims.**

26 Metcalf's proffered support in the FAC for the seven state law claims consists
27 entirely of the following allegation:
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30. Defendants appear to have broken California state laws: 1) Business and Professions Code 17200 for unfair and deceptive business practices; 2) Unjust enrichment; 3) breach of fiduciary duty; 4) conversion; 5) negligence and 6) violations of the California Consumer Protection Act; 7) violations of California civil Code 2943 for not supplying Payoff Demand Statements, if requested by mail [both bank and trustee]. (FAC, ¶30.) This allegation is insufficient to state a cognizable claim. Accordingly, Metcalf's state-law claims supporting the request for statutory damages are dismissed with leave to amend.

D. Fraud Cause of Action.

Under California law, a fraud cause of action has the following elements: "a representation, usually of fact, which is false, knowledge of its falsity, intent to defraud, justifiable reliance upon the misrepresentation, and damage resulting from that justifiable reliance." Stansfield v. Starkey, 220 Cal. App. 3d 59, 72-73 (1990). The facts tending to prove these elements must be alleged with sufficient specificity. Id. at 73. The particularity requirement necessitates pleading facts which show "how, when, where, to whom, and by what means representations were tendered." Id. (quoting Hill Trans. Co. v. Southwest, 266 Cal. App. 2d 702, 707 (1968)). The normal liberal standards do not apply to fraud claims, which must be pled with particularity in order to allow the defendant to prepare his defense. Id.

Here, the FAC alleges simply that Metcalf recently discovered that "no one disclosed certain facts that they were necessarily required to disclose and went further to conceal such facts. . . ." (FAC, ¶ 34.) Absent from the FAC is any particularity with respect to what material facts were concealed, and which Defendant concealed the material facts. Additionally, to the extent Metcalf is contending that affirmative misrepresentations were made, she must identify the misrepresentations, which Defendant(s) made the statements, when they were made, and to whom they were made. Because the FAC lacks the requisite level of specificity, the fraud cause of action is dismissed with leave to amend.

1 **E. Breach of Contract Cause of Action.**

2 A breach of contract cause of action is comprised of the following elements:

3 (1) existence of a contract; (2) plaintiffs' performance or excuse for nonperformance;
 4 (3) defendants' breach; and (4) damages to plaintiffs as a result of the breach.
 5 Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co., 116 Cal. App. 4th 1375, 1391
 6 (2004). Plaintiffs may show the existence of a written contract by setting it out
 7 verbatim, attaching it as an exhibit, or swearing to its legal intendment and effect.
 8 Scolinos v. Kolts, 37 Cal. App. 4th 635, 640 (1995). An oral contract may be pleaded
 9 generally to its effect because it is not typically possible to allege exact words. Id.

10 Metcalf's breach of contract claim is based entirely on the following allegations:

11 44. PLAINTIFF realleges and incorporates by reference the allegations
 12 contained in paragraphs 1-42.

13 45. Plaintiffs alleges [sic] that at all times there existed between Plaintiffs
 14 and defendants either a direct or implied contractual covenant of good
 15 faith and fair dealing requiring defendants to safeguard protect or
 16 otherwise care for the assets and/or rights of Plaintiffs. Said covenant
 16 prohibited the [sic.]

17 (FAC, ¶44.²) Even assuming that Metcalf's factual allegations are true, they fall far
 18 short of alleging the required elements for a breach of contract claim. For example,
 19 Metcalf fails to allege her performance (or excuse for non-performance), and she fails
 20 to identify what contract term Defendants allegedly breached. Accordingly, the breach
 21 of contract claim is dismissed with leave to amend.

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 23 **F. Quiet Title Cause of Action.**

24 Metcalf alleges that Defendants have wrongfully interfered or threatened to
 25 interfere with her use and enjoyment of the Property. Defendant Aurora argues that
 26 Metcalf fails to state a cause of action for quiet title. Defendant Drexel argues that the
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 ²Paragraph 45 in the FAC is cutoff.

1 claim should be dismissed because Drexel has no interest in the Property, having
2 assigned its interest to Aurora. Metcalf does not address the issue in her opposition.

3 In order to state a claim for quiet title, the complaint must include (1) the subject
4 property's description, including both its legal description and its street address or
5 common designation; (2) plaintiff's alleged title to the property; (3) the adverse claims
6 against which a determination is sought; (4) the date as of which the determination is
7 sought; and (5) a prayer for the determination of the title against the adverse claims.
8 See Cal. Civ. Proc. § 761.020.

9 It is clear from Defendants' motions and Plaintiffs' opposition that Drexel
10 sold the Property at the foreclosure sale. Because Drexel is not claiming any further
11 interest in the Property, Drexel does not have an "adverse claim" against which a
12 determination is sought. Therefore, Metcalf has failed to state a claim against Drexel
13 for quiet title.

14 Similarly, Metcalf has also failed to satisfy the pleading requirements for a quiet
15 title action against Aurora. The FAC does not identify the Property's legal description
16 or the date as of which the determination is sought. Moreover, there are several
17 defendants in this action, and Metcalf fails to allege which defendants are asserting an
18 adverse claim to the Property. Accordingly, Metcalf's claim for quiet title is dismissed
19 with leave to amend.

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21 **G. Declaratory Relief Cause of Action.**

22 Metcalf requests a declaration that Defendants violated state securities law and
23 that she is the Property's rightful owner.

24 An action for declaratory relief requires the plaintiff to demonstrate the existence
25 of an actual controversy regarding the legal rights of the parties. McClain v. Octagon
26 Plaza, LLC, 159 Cal. App. 4th 784, 800 (2008). Where there is an accrued cause of
27 action for a past breach of contract or other wrong, declaratory relief is inappropriate.
28 See Canova v. Turstees of Imperial Irrigation District Employee Pension Plan, 150 Cal.

1 App. 4th 1487, 1497 (2007) (“Declaratory relief operates prospectively to declare future
2 rights, rather than to redress past wrongs”). The purpose of a declaratory judgment is
3 to set controversies at rest before they cause harm to the plaintiff, not to remedy harms
4 that have already occurred. County of San Diego v. California, 164 Cal. App. 4th 580,
5 607-08 (2008). If a party has a “fully matured cause of action for money,” the party
6 must seek damages rather than declaratory relief. Canova, 150 Cal. App. 4th at 1497.

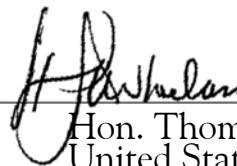
7 Based on the FAC’s allegations, declaratory relief does not appear appropriate at
8 this time. Because the foreclosure sale has taken place, the claimed invasion of right has
9 already occurred. Accordingly, the proper avenue for Metcalf is to seek redress through
10 a claim for money damages. See Canova, 150 Cal. App. 4th at 1497; see also Clarke v.
11 Witkin & Eisenger, 2002 WL 1057458, *3 (Cal. Ct. App. 2002) (holding that Plaintiff’s
12 action for declaratory relief “is now moot because the foreclosure sale, which Clarke
13 sought to avoid, has already occurred.”). Therefore, the declaratory relief claim is
14 dismissed with leave to amend.

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16 **IV. CONCLUSION**

17 For the foregoing reasons, the Court **GRANTS** Defendant Aurora’s motion to
18 dismiss (Doc. No. 42), and Defendant Drexel’s motion to dismiss (Doc. No. 43).
19 Plaintiff Maria Metcalf’s second amended complaint, if any, must be filed on or before
20 November 24, 2008.

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22 **IT IS SO ORDERED.**

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24 DATED: October 29, 2008

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27 Hon. Thomas J. Whelan
28 United States District Judge

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